

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No: 7:10-CR-13-1-F
No. 7:12-CV-29-F

JEROME RICO EVANS,)	
Petitioner,)	
)	ORDER
)	
UNITED STATES OF AMERICA)	
Respondent.)	

The petitioner, Jerome Rico Evans, has filed a motion [DE-39] pursuant to 28 U.S.C. § 2255 to vacate, correct or set aside his sentence in light of the *en banc* ruling in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). Counsel was appointed to investigate Evans's eligibility for Simmons relief and to file such supplemental materials as deemed appropriate. See Order [DE-40]. In the same order, the Government was directed to file a response to Evans's motion. See id.

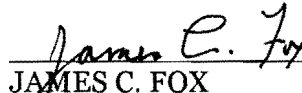
The Government's response, filed on March 16, 2012, included a motion to dismiss this action because the facts underlying Evans's conviction and sentence do not support relief under Simmons. To date, Evans has filed no response or reply to the Government's motion.

After careful consideration of the record herein, which includes a transcript of Evans's Rule 11 and sentencing hearings, together with the Government's "response" which includes a motion to dismiss and memorandum in support thereof, the court concludes that Evans is not entitled to the relief he seeks. Specifically, the Simmons ruling has no effect on Evans's status as a career offender because Evans, in fact, was sentenced on both the predicate convictions for terms exceeding one year imprisonment. Nor does the record support his claim that he received ineffective assistance of trial counsel. See Strickland v. Washington, 466 U.S. 668 (1984).

Accordingly, because he has failed to present a factual basis for relief from his sentence, and for the reasons more fully set forth in the Government's response [DE-45], Evans's § 2255 motion is DENIED. Evans has neither requested nor demonstrated entitlement to a Certificate of Appealability. Therefore, a Certificate of Appealability also is DENIED.

SO ORDERED.

This, the 16th day of January, 2013.



JAMES C. FOX
Senior United States District Judge